



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1995

Mr. David A. Anderson
Chief Legal Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR95-1375

Dear Mr. Anderson:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36197.

The Texas Education Agency (the "TEA") received an open records request on August 16, 1995. The requestor asked for various items of information including teacher certification revocations and suspensions and sanctions of Texas public school employees. You sought a decision from this office concerning that request by letter dated September 29, 1995. Your correspondence indicates that, in a telephone conversation with a TEA attorney, the TEA attorney agreed to provide some of the requested documents and the requestor "agreed to extend the time to comply with the remainder of her request."

We believe that there may have been some confusion over the requirements of sections 552.301 and 552.221. Section 552.301 requires the governmental body to seek, not later than ten days after the date of receiving a request, a decision from this office concerning exceptions from disclosure. Section 552.221(d) requires that when the governmental body cannot produce public information within ten calendar days after the date the information is requested, this fact must be certified in writing and a date set when the information will be available.

This office has also stated that the ten day deadline is tolled during the period that a requestor and a governmental body attempt to resolve access to the records informally, but only if there is actually legitimate confusion as to the scope of the request. Open Records Decision No. 333 (1982). However, you do not assert that that you were confused about the scope of the request.

Chapter 552 contains no provisions authorizing a governmental body to waive the statutory requirement to raise exceptions to disclosure and seek a decision from this office within ten days of receipt of the request.¹ Since TEA failed to timely seek a decision from this office as required by section 552.301, the presumption is that the information at issue is public. Gov't Code § 552.302.

To overcome this presumption, the governmental body must show a compelling reason, such as another law that requires confidentiality or protection of third party interests which have been recognized by the courts. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision Nos. 319 (1982), 150 (1977).

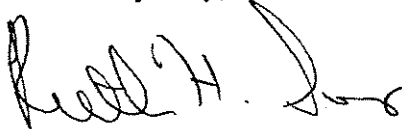
You have submitted to this office samples of the types of information at issue. You state that the information at issue includes the home addresses, home telephone numbers, and social security numbers of public employees. Sections 552.117 and 552.024 provide that a current or former public employee or official can opt to keep private their home address, home telephone number, social security number, and information that reveals whether that person has family members. You must withhold information about those public employees and officials who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987).

You assert that other information at issue is made confidential by law. Since it is a misdemeanor offense to distribute information made confidential by law, Gov't Code § 552.352, you may not release information that is otherwise confidential. We have enclosed a list of the types of information that are often confidential. The other information at issue must be released to the requestor.

¹We note that the requestor, by letter to this office dated October 8, 1995, states that she did not agree to extend the time to seek a decision from this office. The requestor also states she submitted an earlier request for the same information. In any event, chapter 552 contains no provision for the waiver of a time limit set by statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 36197

Enclosures: Submitted documents
Confidentiality list

cc: Ms. Kathy Walt
The Houston Chronicle
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(w/enclosure Confidentiality list)